



REPUBLIC OF KENYA



**Njora v Njora (Civil Application E049 of 2025)  
[2025] KECA 1176 (KLR) (30 June 2025) (Ruling)**

Neutral citation: [2025] KECA 1176 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CIVIL APPLICATION E049 OF 2025**

**JM MATIVO, JA**

**JUNE 30, 2025**

**BETWEEN**

**GEOFFREY KAMONJO NJORA ..... APPLICANT**

**AND**

**ELIJAH KARAIHIRA NJORA ..... RESPONDENT**

*(An application for extension of time against the Ruling by (H. K. Chemitei, J.) dated 19th October, 2023 in Succession Cause No. 124 of 2003)*

**RULING**

1. Vide an application dated 23<sup>rd</sup> April 2025 brought under section 4 (sic) of the Court of Appeal Rules, 2022, sections 1A, 1B, 3A of the *Civil Procedure Act*, Order 50 Rule 6 of the *Civil Procedure Rules*, the applicant seeks leave to appeal out of time against the ruling of the H.K. Chemitei, J. delivered in Nakuru High Court Succession Cause No. 124 of 2003 on the 19<sup>th</sup> October 2023. The applicant also prays that his memorandum of appeal be deemed as properly filed. Prayer three seeks stay of the proceedings in Nakuru High Court Succession Cause No. 124 of 2003 pending the hearing and determination of the appeal. I will shortly comment on this prayer. Lastly, the applicant prays for costs of the application to be provided for.
2. The application is premised on the grounds listed on the face of the application and the applicant's supporting affidavit sworn on 23<sup>rd</sup> April 2025. The grounds are: (a) a notice of appeal dated 16<sup>th</sup> November 2023 was filed in Court by the applicant's advocate and a letter bespeaking proceedings dated 27<sup>th</sup> November 2023 was received in court on 30<sup>th</sup> November 2023; (b) a memorandum of appeal was filed in court on 23<sup>rd</sup> November 2023 but the same was not registered for want of physical copies of the record as advised by the registry; (c) the delay to file an appeal was occasioned by the delay in obtaining the typed and certified proceedings; (d) there was a dispute between the applicant's advocate and his erstwhile advocate which caused a further delay in filing this appeal; (e) that the delay is not



- deliberate and /or inordinate; (f) the appeal has a high chance of success because the court refused to avail the proceedings; (g) the respondent shall suffer no prejudice if this application is allowed.
3. The matter came up for case management on 19<sup>th</sup> May 2025 and directions were issued requiring the respondent, who did not attend the directions file and serve a reply within 7 days. The parties were also directed to file their respective written submissions within 7 days. Notably, the respondent though duly served is yet to comply with the case management directions. Consequently, the instant application is not opposed.
  4. The application before me is what is referred to as an omnibus application, brought under a number of rules, (many of which are irrelevant) seeking a raft of orders that cannot, under our Rules, be heard and determined by a single judge. (See rule 55 of the Rules of this Court). Therefore, prayer (c) is not available before a single judge. I will only restrict myself to the prayers which can be heard and determined by a single judge. But before even considering the said prayers, there is a jurisdictional question that is evidently lingering over this application. The question goes to the competence of the application before me and whether this Court’s jurisdiction sitting as a single judge has been properly invoked.
  5. Importantly, the intended appeal arises from a succession matter. Its trite law that under the [Law of Succession Act](#), there is no automatic right of appeal. Relevant to the issue at hand is Rule 41(1) of the [Court of Appeal Rules, 2022](#) which provides that:
    - “1. In a civil matter—
      - a. where an appeal lies with the leave of the superior court, application for such leave may be made—
        - i. informally at the time when the decision against which it is desired to appeal is given; or
        - ii. by motion or chamber summons according to the practice of the superior court, within fourteen days of such decision;
      - b. where an appeal lies with the leave of the Court, application for such leave shall be made—
        - i. in the manner laid down in rules 44 and 45 within fourteen days after the decision against which it is desired to appeal; or
        - ii. where application for leave to appeal has been made to the superior court and refused, within fourteen days after such refusal.
  6. I have carefully studied the entire file. There is nothing to show that the applicant sought and obtained leave from the High Court to file an appeal against the impugned ruling. It is also noteworthy that no such an application for leave has been made before this Court in accordance with Rule 41 (1) (b) of the [Court of Appeal Rules, 2022](#).
  7. The law as enunciated in many decisions of this Court is that where leave to appeal is required, an application for leave may be made informally/orally at the time the decision intended to be appealed against is made or formally within 14 days of that decision. Where such an application is made before the High Court and is dismissed, then the party intending to appeal must move this Court within 14 days of such dismissal. (See *Awadh Saleh Said Sherman & Ano. vs. Barika Mohamed Saleh Said Sherman*, Civil Application No. Nai. 346 of 2001 and *Manase Makio vs. Asman Mombo*, Civil Appeal No. 36 of 1998).



8. In this case the decision sought to be appealed against was made on 19<sup>th</sup> October 2023. The instant application is dated 23<sup>rd</sup> April 2025 clearly outside the 14 days prescribed under Rule 41(1).
9. As stated above, there is a long line of authorities consistently holding that there is no automatic right of appeal to this Court from a decision of the High Court made proceedings governed by the Law of Succession Act. The appellant must first obtain leave, either from the High Court or from this Court. This Court in Mughal & Rashid (Suing as the legal representatives of the Estate of the Late Rashid Mughal) & Another vs. Bhola (Civil Appeal 41 of 2018) [2025] KECA 420 (KLR) (28 February 2025) (Judgment) succinctly addressed the said issue as follows:

“Undeniably, the Law of Succession Act does not have an express provision allowing an aggrieved party in succession matters to appeal to this Court against decisions made by the High Court. Section 50 (1) & (2) of the Law of Succession Act, the only provisions in the said statute which deal with appeals provides for appeals against- (a)decisions made by the Resident Magistrates’ Courts, and,(b) decisions made by the Kadhi’s court. Regarding decisions made by the Resident Magistrates, sub- section (1) clearly provides that appeals against such decisions lie in the High Court whose decision shall be final. Regarding decision made by the Kadhi’s court in respect of estates of a deceased Muslim, appeals lie in the Court of Appeal, with the leave of the court. Parliament could have been clearer than that...In our considered opinion, for this Court to properly entertain an appeal from the High Court, as the above section suggests, the appeal must lie to this Court under any written law. In other words, unless a right of appeal is clearly and expressly provided by a statute, it does not exist. This is because a right of appeal infers in no one, that is, it cannot be assumed, and therefore an appeal for its maintainability must have the clear authority of law. That is the entry point that grants this Court jurisdiction to adjudicate on the matter. If the statute does not create any right of appeal, no appeal can be sustained by this Court. It is a prerequisite for invoking the jurisdiction of this Court...As the law stands, the appellants were mandatorily required to obtain leave from the High Court or failing that, obtain the leave of this Court to enable them mount a successful appeal.

An appeal filed without obtaining the necessary “leave to appeal” from the court, when such leave is required by the law, (as is the case here), is incompetent and will be struck off. It follows that this appeal is incompetent. Such leave not having been obtained, we have no jurisdiction to hear and determine the appeal.”

10. As the law stands, without leave to appeal to this Court granted by either the High Court or this Court, the intended appeal would be still-born. Grant of leave in matters governed by the Law of Succession Act is a prerequisite which goes deep into the competence of the application before me and a jurisdictional hurdle for this Court to properly seize the matter. Accordingly, it will serve no purpose for me to consider the application before me on merits. The upshot is that, the application dated 23<sup>rd</sup> April 2025 is incompetent and is accordingly dismissed. Since no reply has been filed to the application, I make no orders as to costs.

**DATED AND DELIVERED AT NAKURU THIS 30<sup>TH</sup> DAY OF JUNE, 2025.**

**J. MATIVO**

.....

**JUDGE OF APPEAL**

I certify that this is a true copy of the original.



Signed.

**Deputy Registrar**

